

05-22-23
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Tentative Rulings

1. ESTATE OF CAVANA 23PR0023

Petition for Probate

Decedent died testate on November 16, 2022. The Will was lodged with the court on February 6, 2023. The Will, dated January 20, 2015, names Petitioner as Executor and waives bond. (Included with the Petition is documentation of the name change of Petitioner from Daniel Morgan Cavana, as he is named in the Will, to Daniel Morgan Cavanagh, on March 5, 2019 in Orange County Superior Court [Case No. 01042179]).

Petitioner has executed a Duties/Liabilities Statement and Confidential Supplement (DE 147/147s) in accordance with El Dorado County Superior Court Local Rules, Rule 10.02.10.

Proof of publication was filed with the court on May 15, 2023. Proof of service of Notice of Hearing was filed with the court on March 29, 2023.

TENTATIVE RULING #1: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2. ESTATE OF QUIGLEY 23PR0033

Petition for Final Distribution on Waiver of Account

Decedent, a resident of Helena, Montana, died testate on October 5, 2019, survived by Petitioner, his only child.

Petitioner has filed a Declaration, dated February 16, 2023, stating that there is a holographic Will attached to the declaration, which is not in fact attached. The Declaration states that the referenced Will complies with all requirements of law in the place where decedent was domiciled in Lewis and Clark County, Montana. Probate was opened in that County by the Court of Montana on November 9, 2020, but that decedent's California real estate in Diamond Springs, California was the only asset that was not included in that proceeding.

Petitioner executed and filed a Duties/Liabilities Statement (DE-147) on February 16, 2023, but has not yet filed a Confidential Supplement (DE-147s) in accordance with El Dorado County Superior Court Local Rules, Rule 10.02.10. Petitioner has waived bond.

Proof of publication was filed with the court on May 15, 2023. Proof of service of Notice of Hearing was filed with the court on March 23, 2023.

A Final inventory and Appraisal has been filed, however the appraisal of real property has not been performed by a probate referee as required by Probate Code §§ 8901-8902.

TENTATIVE RULING #2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, MAY 22, 2023, IN DEPARTMENT NINE.

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3. ESTATE OF SCHOTT PP20210134
ESTATE OF SCHOTT PP20210078

Status of Administration

On April 16, 2021. Letters of Administration were issued under Case No. PP20210078; however, the Petition for general administration of the estate was filed under Case No. PP20210134. Letters Testamentary were filed in Case No. PP20210134 on August 25, 2021.

On March 11, 2022, Special Administrator/Executor Matthew Schott moved to consolidate both cases under Case No. PP20210078 because Notices to Creditors were sent out with that case number, and one creditor filed a claim under that case number. Following a hearing on May 18, 2022, the cases were consolidated under Case number PP20210078 by order of the court, filed on June 22, 2022.

At the hearing on August 24, 2022, the court noted that there was no Final Account and Report in the court's file. There have been no additional filings by the Special Administrator since that hearing.

TENTATIVE RULING #3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, MAY 22, 2023, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

4. ESTATE OF PICKELL 22PR0092

Status of Administration

At the previous hearing on January 30, 2023, the court granted the Petition for Final Distribution on Waiver of Account. There have been no additional filings since the January 30, 2023, hearing.

No receipts of final distribution have been filed and there is no Petition for an Order of Final Discharge (DE-295) in the court's file.

TENTATIVE RULING #4: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, MAY 22, 2023, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

5. ESTATE OF STUART 23PR0035

Petition for Probate

Decedent died intestate on October 5, 2022, survived by two adult children, including Petitioner. Both heirs have waived bond.

Petitioner has executed and filed a Duties/Liabilities Statement and Confidential Supplement (DE 147/147s) in accordance with El Dorado County Superior Court Local Rules, Rule 10.02.10.

Proof of publication was filed with the court on March 29, 2023. Proof of service of Notice of Hearing was filed with the court on March 6, 2023.

TENTATIVE RULING #5: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

6. ESTATE OF PROTZEL 22PR0308

Petition to Determine Succession to Real Property

Decedent died testate on July 20, 2022. Petitioner, decedent's only child, petitions for an order determining that real and personal property belonging to the decedent pass to petitioner pursuant to Probate Code § 6402. No probate proceedings have commenced for decedent's estate.

At the hearing on January 23, 2023, the court instructed petitioner to correct specified deficiencies in the petition.

Petitioner also filed a Final Inventory and Appraisal on November 23, 2022. At the hearing on January 23, 2023, the court instructed petitioner that appraisal of real property must be conducted by a probate referee appointed for El Dorado County pursuant to Probate Code § 8903. The court continued the matter to allow petitioner time to file an amended petition and an appraisal in accordance with the court's instructions.

On May 4, 2023, Petitioner filed an Amended Petition to Determine Succession to Real Property and Final Inventory and Appraisal executed by the probate referee.

TENTATIVE RULING #6: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

7. ESTATE OF MCKNULTY 22PR0099

Petition for Probate (Bolduc)
Petition to Determine Succession to Real Property (Schroeder)
Petition to Determine Spousal Property (Schroeder)
Petition for Probate (Schroeder)

Petitioner Schroeder Petitions for Probate, to Determine Succession to real Property and to Determine Spousal Property

Letters of Special Administration were issued to Petitioner Schroeder on November 23, 2022, with special powers listed in Form DE-140, and an expiration date of April 30, 2023. At the November 23, 2022 hearing, the court ordered Petitioner Schroeder to submit an accounting and set a hearing date of April 3, 2023.

On February 6, 2023, Petitioner Schroeder filed a Notice of Hearing and a proof of service of the Notice. This Notice provided that Petitioner Schroeder had filed a Petition to Determine Succession to Real Property and Person[al] Property with respect to 1) a "home and all belongings at 6690 Tamalpais Rd. Garden Valley CA 95633" and 2) a "Ford 2006 truck vin # 1FTWW31P46EC44641." A hearing date was set for April 3, 2023.

Although Petitioner Schroeder also filed a Petition to Determine Spousal Property that was also set for hearing on April 3, 2023, that Petition was not included in the Proof of Service. Only the Petition to Determine Succession to Property was listed on the Proof of Service that was filed on February 6, 2023.

On December 28, 2022, Petitioner Schroeder filed a civil subpoena duces tecum for production of documents directed to Jonathan Stark of Diebold/Nixdorf, decedent's employer. Requested documents included 1) decedent's W2 forms for 2021/2022 through March 4, 2022; 2) records of withdrawals from decedent's account; 3) amounts paid out of decedent's life insurance, retirement and investment accounts; 4) personal documents from decedent's laptop; and 5) any documents related to decedent that were not addressed to 6990 Tamalpais Rd., Garden Valley, CA 95633. The purpose of this subpoena was generally to prove that Petitioner Schroeder and decedent's children were the rightful heirs of decedent. The date specified for production of these documents was April 3, 2023.

Documents responsive to the December 28, 2022 subpoena are among the multiple attachments appended to Petitioner Schroeder's declaration (Declaration Non Confidential of Documents) filed on March 22, 2023.

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On March 22, 2023, Petitioner Schroeder filed a second declaration (Declaration Non Confidential Statement) in support of her Petition to Determine Succession to Real Property and Personal Property. The declaration included multiple attachments generally supporting the proposition that Petitioner Schroeder and decedent shared various accounts related to the real property and the vehicle that are the subject of the petition.

On May 16, 2023, Petitioner Schroeder filed an additional Declaration, dated May 16, 2023, in support of her various Petitions and attaching documents.

On April 12, 2023, Petitioner Schroeder filed a subpoena duces tecum issued to Marshall Medical Records Department regarding its creditor claim for decedent's medical bills, and those records were recorded by the court clerk on April 19, 2023.

On April 24, 2023, Petitioner Schroeder filed a subpoena duces tecum issued to Advent Credit Union, requesting records that would establish transfers of funds between Petitioner Schroeder and decedent "to show Ruby McNulty received monies from decedent, . . . life insurance policies and to show where those monies were distributed to."

Also on April 24, 2023, Petitioner Schroeder filed a subpoena duces tecum issued to Redwood Credit Union "show Ruby McNulty received monies belonging to decedent, Mark McNulty's children."

Petitioner Bolduc has filed an Objection to Petitioner Schroeder's three outstanding Petitions, and requesting that the Letters of Special Administration issued to Carrie Schroeder by revoked. However, those Letters of Special Administration expired on April 30, 2023 (see Letters filed on November 23, 2022).

Bolduc Petition for Probate

On April 24, 2023, Petitioner Bolduc, decedent's sister, filed a Petition to Administer the Estate of decedent, with Proof of Service attached. Petitioner Schroeder filed an Objection to this Petition on April 27, 2023, as well as a Declaration in which she states that all real and personal property of decedent should pass to her as decedent's Quasi-spouse and that Bolduc's Petition should be denied.

On May 1, 2023, Petitioner Bolduc filed a Declaration, dated April 14, 2023, listing her qualifications to serve as administrator of the estate. Proof of Publication of the Bolduc's Petition was filed on May 8, 2023.

There is no Duties/Liabilities Statement (DE-147/DE-147s) in the court's file in support of Petitioner Bolduc's Petition as required by Probate Code § 8404.

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TENTATIVE RULING #7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, MAY 22, 2023, IN DEPARTMENT NINE.

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8. ESTATE OF QUERIN PP20200026

Final Distribution Hearing

Decedent died on December 4, 2019. Letters of Administration were issued on June 18, 2020. The Final Inventory and Appraisal was filed on June 2, 2020.

After being appointed, Petitioner located a holographic will among decedent's personal possessions. A Proof of Holographic Instrument was filed with the court on April 12, 2021, and subsequent to this process the original will was lost. On June 7, 2022, Petitioner filed a Declaration of Lost Holographic will and a Petition to Admit Lost Holographic Will to Probate, First and Final Account and Petition and Report of Executor for Settlement of the Estate, and Final Distribution. Notice of the Petition was filed on June 22, 2022 and again on October 22, 2022 for the continued hearing date. At the hearing of May 1, 2023, the court admitted the will to probate.

Final Distribution

Decedent was the only child of Bruno Querin, who has no other immediate family. The will provides for 100 percent of the estate to Bruno Querin, her father, or if Bruno Querin dies, to Peter A. Cutrell. Bruno Querin died on December 13, 2020, with no surviving immediate family, and no probate has been opened for Bruno Querin's estate. Accordingly, petitioner proposes to distribute 100 percent of the residuary estate to Peter A. Cuttrel.

The Petition requests:

1. Decedent's will be admitted to probate;
2. The administration of the estate be brought to a close;
3. All acts and proceedings of the personal representative as alleged in the Petition be confirmed and approved;
4. All creditor claims not properly filed with the court and served on the estate be barred;
5. Statutory fees to the personal representative in the amount of \$8,158
6. Statutory attorney's fees in the amount of \$8,158 to Clara Yang, attorney for Petitioner and the estate;
7. Approval of distribution of 100 percent of the estate to Peter A. Cuttrel in accordance with the terms of the will.

Having admitted the Will to probate, one issue remained as to final distribution: decedent's will left her estate to her father, Bruno Querin, and "if my father has passed, I want my entire [entire] house + belong[ing]s to go to Peter A. Cutrell." Bruno Querin in fact survived decedent,

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but did not live long enough to receive distribution of the estate, not did Bruno Querin have any heirs or an estate to probate. The court requested additional information as to the appropriate distribution under those circumstances at the May 1, 2023 hearing and additional information was filed with the court on May 17, 2023.

Probate Code § 21110(a) provides that “if a transferee is dead when the instrument is executed, or fails or is treated as failing to survive the transferor or until a future time required by the instrument, the issue of the deceased transferee shall take the transferee’s place.” Unfortunately, since Bruno Querin did not have heirs, this provision does not resolve the question. However, Section 21110(b) does help determine the correct result under the circumstances, stating: “The issue of a deceased transferee do not take in the transferee’s place if the instrument expresses a contrary intention or a substitute disposition.” In this case, the will expressly provides that if Bruno Querin passed, the decedent expressed the intention that Petitioner Peter Cutrell receive distribution of the estate, as requested by the Petition.

There were additional distributions set forth in the Will, including certain distributions to “Pat” for “Domestic Violence Programe”. Petitioner’s Declaration, dated May 15, 2023, explains that Pat Baron was a friend who ran a domestic violence non-profit who also predeceased the decedent and that the non-profit ceased operations upon his death in 2018.

Accordingly, the court finds that the estate should be distributed according to the terms of the Petition for Final Distribution.

TENTATIVE RULING #8: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

9. ESTATE OF GYORGY 23PR0031

Letters of Administration

Decedent died intestate on May 12, 2017, survived by her husband and three adult children. Decedent's husband died on February 13, 2023 (see related Case No. 23PR0032). All surviving heirs have waived bond and have executed a Declination and Nomination of Administrator, nominating Petitioner, decedent's daughter-in-law as administrator.

Notice of the Petition and proof of service was filed on May 5, 2023. Proof of publication was filed on March 27, 2023.

A Duties/Liabilities statement (DE 147/DE 147s) is on file with the court as required by Probate Code § 8404.

TENTATIVE RULING #9: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

10. ESTATE OF BENETTI 23PR0056

Petition for Probate

Decedent died testate on January 22, 2023. The Will, dated July 19, 2022, has been lodged with the court. Petitioner is named as Executor in the Will. The Will waives bond.

Notice of the Petition and proof of service was filed on May 5, 2023. Proof of publication was filed on May 1, 2023.

A Duties/Liabilities statement (DE 147/DE 147s) is on file with the court as required by Probate Code § 8404.

TENTATIVE RULING #10: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

11. ESTATE OF BUCKLEY 23PR0037

Petition for Probate

Decedent died testate, survived by two adult children. The Will, dated February 24, 2003, has been lodged with the court. Petitioners, decedent's two sons, are named as co-Executor in the Will in the event that settlor's wife is unable or unwilling to serve. The Petition does not indicate whether settlor's wife is deceased or is otherwise unable or unwilling to serve as Executor.

Both Petitioners have executed and filed bond waivers.

Notice of the Petition and proof of service was filed on March 17, 2023. Proof of publication was filed on April 13, 2023.

A Duties/Liabilities statement (DE 147) is on file with the court as required by Probate Code § 8404 for Petitioner Kent Buckley; however there is no Form DE-147 on file for Petitioner Quince Buckley, and no Form De-147s on file with the court for either Petitioner as required by El Dorado County Superior Court Local Rules, Rule 10.02.10.

TENTATIVE RULING #11: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, MAY 22, 2023, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

12. ESTATE OF GYORGY 23PR0032

Letters of Administration

Decedent died intestate on February 13, 2023, survived by three adult children. Decedent's wife died on May 12, 2017 (see related Case No. 23PR0031).

All surviving heirs have waived bond and have executed a Declination and Nomination of Administrator, nominating Petitioner, decedent's daughter-in-law as administrator.

Notice of the Petition and proof of service was filed on May 5, 2023. Proof of publication was filed on March 30, 2023.

A Duties/Liabilities statement (DE 147/DE-147s) executed by Petitioner is on file with the court as required by Probate Code § 8404 and El Dorado County Superior Court Local Rules, Rule 10.02.10.

TENTATIVE RULING #12: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

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13. JOHN M. "MIKE" SHIELDS REVOCABLE LIVING TRUST

22PR0317

Accounting Hearing

On December 9, 2022, Ruby Shields and Paul Shields filed a petition to confirm trust terms, for an order to compel trustee to account, request for financial documents, and request for attorney fees and costs. Petitioners are the children of John M. "Mike" Shields, the Grantor and initial trustee of the Trust.

Petitioners are partial beneficiaries of the residual share of the Trust. Respondent Leslie C. Myrick was the girlfriend of the Grantor, the acting successor trustee of the Trust, and also a beneficiary of the Trust. The petition requests that respondent provide a full and complete copy of the Trust dated August 11, 2000; that she prepare and file a complete account and report of her acts as successor trustee from April 15, 2022 (date of Grantor's death) to the present; that she be instructed to petition this court for settlement of the account and give notice of the hearing on the petition, and that respondent provide documentation for any and all financial accounts owned by Grantor as of the date of his death, including accounts held in joint tenancy with any other person or assets payable on death through beneficiary designation. Petitioners also request attorney fees and costs.

On January 12, 2023, respondent filed a response and objection to the petition. Specifically, respondent objects to an award of attorney fees and costs as there was no formal or specific demand to do an accounting. Respondent agrees to provide an account of the Trust's assets and expenses as of the Grantor's date of death to the present, and then annually as required by the Probate Code. Respondent states that a copy of the terms of the Trust as possessed by respondent was provided to the beneficiaries along with the notice of trust administration. She will collect and provide whatever other documents she has.

At the hearing of March 13, 2023, the court ordered an accounting to be filed, served and delivered to the office of counsel for Petitioners by May 15, 2023.

TENTATIVE RULING #13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, MAY 22, 2023, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

14. TRUST CREATED UNDER THE WILL OF EDWARD J. RUEGG

23PR0019

Petition Hearing - Trust

Petitioner seeks instruction from the court regarding an existing testamentary Trust (the "Trust") (Exhibit A to the Petition) and whether Petitioner may create a proposed Special Needs Trust (Exhibit F to the Petition).

The Settlor of the Trust had two children, including Petitioner who was named as Trustee. Settlor established a Revocable Trust Agreement on October 18, 2022, pursuant to which the estate was to be divided in equal shares to his two daughters and CAG, settlor's grandchild who suffers from schizophrenia. In 2015 CAG was arrested for violent behavior Trust (Exhibit C to the Petition) and was later placed under the care of a confidential conservatorship in San Mateo County. Settlor passed away on April 11, 2019. On December 1, 2022, the San Mateo Public Guardian-Conservator requested \$141,000 be distributed to CAG's estate to pay for outstanding debts and to leave ample funds for CAG's expenses. (See Exhibit E to the Petition.)

On file as Exhibit A to the Petition is the First Amendment to the Trust document, executed on June 28, 2004, which identifies CAG as a beneficiary and provides, in pertinent part, that: (1) 1/3 of the estate to be held, administered and distributed for the benefit of CAG; (2) income to be added to principal; (3) that Trustee shall pay or apply to the benefit of CAG as much of this 1/3 of the trust estate as the Trustee in the Trustee's discretion considers necessary for CAG's health, education, support and maintenance; (4) when CAG attains the age of 45 the Trustee shall distribute ½ of the balance of the Trust to her; (5) when CAG attains the age of 50 the Trustee shall distribute the balance of the Trust to her.

Petitioner has filed the Declaration of Margine, Mejia-Ruiz, dated December 6, 2022 (Exhibit D to the Petition). Declarant is the Deputy Public Guardian for San Mateo County's Public Guardian's office and who serves as Conservator of CAG (case number 112967), who declares that the conservatorship of CAG was renewed in October 2022, that CAG has been identified as a beneficiary of the estate of her grandfather, Petitioner has requested confirmation that CAG is still living, that CAG is still living and has been placed in a confidential conservatorship since August 2022, that since that time declarant had both spoken to and visited CAG, that based upon CAG's birthdate and written records she is the same person who is the beneficiary of the estate.

Petitioner has distributed the assets of the Trust to two of the three beneficiaries. As to the remainder, Petitioner has drafted a proposed Special Needs Trust which would allow CAG to continue to be eligible for public assistance (Exhibit F to the Petition). The San Mateo County

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Court has held that San Mateo County is not the correct venue for the matter because the Trustee resides in El Dorado County.

Petitioner requests that the San Mateo County's Public Guardian be named as Trustee because she is afraid of Petitioner.

Proof of service of the Petition to Trust beneficiaries was filed on April 17, 2023.

Probate Code § 17200(a)(16) provides that: (a) a trustee or beneficiary of a trust may petition the court concerning the internal affairs of the trust, including (16) authorizing or directing transfer of a trust or trust property to or from another jurisdiction.

Pursuant to Probate Code § 17200(a)(16), the Petition requests authority to transfer the following trust assets to CAG, a trust beneficiary:

1. \$141,000 from CAG's beneficiary share to the San Mateo Public Guardian-Conservator to reimburse the county for past expenses and to provide ample funds for future expenses;
2. The balance of approximately \$259,000 to a Special Needs Trust for the benefit of CAG;
3. The San Mateo Public Guardian shall be appointed as the trustee of the Special Needs Trust for the Benefit of CAG to be administered under court supervision;
4. That this case be sealed because CAG is under confidential conservatorship;
5. That the trustee be instructed regarding the trust's assets to a beneficiary, CAG.

TENTATIVE RULING #14: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, MAY 22, 2023, IN DEPARTMENT NINE.

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